

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of Petition :

of :

BECO INDUSTRIES CORPORATION :

for redetermination of deficiency of
franchise tax under Article 9-A of
the tax law for the fiscal year ended
January 31, 1971. :

Beco Industries Corporation having filed petition for redetermination of deficiency of franchise tax under Article 9-A of the tax law for the fiscal year ended January 31, 1971, and a hearing having been held in connection therewith at the office of the State Tax Commission, 80 Centre Street, New York City, at which hearing Nathan Adler, Accountant, appeared personally and testified on behalf of the taxpayer, and the record having been duly examined and considered by the State Tax Commission,

It is hereby found:

(1) On April 3, 1967 the taxpayer requested permission to file a combined return on behalf of itself and wholly-owned subsidiary, Beco Stores of Delaware, Inc., effective with the fiscal year ended January 31, 1967. Such permission was granted by the Corporation Tax Bureau and combined returns have been filed through the fiscal year ended January 31, 1972.

(2) Based on audit of the combined return filed for the fiscal year ended January 15, 1971, the Corporation Tax Bureau issued a statement of audit adjustment dated August 15, 1972, and subsequent notice of deficiency, computed as follows:

Combined entire net income per report on form CT-3A	\$1,208,516.00
Less adjusted combined investment income	958,320.00
Combined business income	250,196.00
Business income allocated 00.235% to N.Y.	588.00
Investment income allocated 79.28% to N.Y.	759,756.00
Total allocated N.Y. income	760,344.00
Tax at 7.167%	54,494.00
Tax reported	37,658.00
Tax deficiency	16,836.00

(3) On its individual report on form CT-3, Beco Industries Corporation reported entire net income of \$388,488, investment income of \$685,663, and no business income. Subtraction of \$685,663 investment income from entire net income of \$388,488 would produce a business loss of \$297,175. The subsidiary reported, on form CT-3, entire net income of \$820,028, investment income of \$272,657 and business income of \$547,371. In filing its combined report on form CT-3A, Beco Industries Corporation carried over entire net income of \$388,488 and limited its investment income to the same amount instead of carrying over investment income of \$685,663 and a business loss of \$297,175. The subsidiary carried over to the combined return on form CT-3A entire net income of \$820,028, investment income of \$272,657 and business income of \$547,371.

(4) Section 211.4 of Article 9-A of the tax law reads in part:

"In the discretion of the tax commission, any taxpayer which owns or controls either directly or indirectly substantially all the capital stock of one or more other corporations * * * may be required or permitted to make a report on a combined basis covering any such other corporation * * * . In the case of a combined report the tax shall be measured by the combined entire net income or combined capital of all the corporations included in the report."

The State Tax Commission hereby

DECIDES:

(A) The individual report on form CT-3 for Beco Industries Corporation should have reflected entire net income of \$388,488, investment income of \$685,663 and a business loss of \$297,175 and such amounts should have been carried forward to the combined report on form CT-3A. The subsidiary, in its individual report, properly reflected entire net income of \$820,028, investment income of \$272,657 and business income of \$547,371 and carried forward such amounts to form CT-3A. Since the tax is being computed on a combined basis, the business loss of the parent must be combined with the business income of the subsidiary, resulting in a combined business income of \$250,196, combined investment income of \$958,320 and combined entire net income of \$1,208,516.

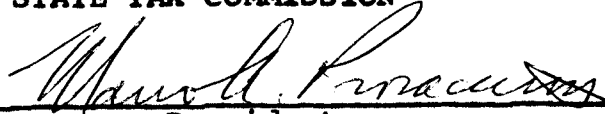
(B) The taxpayer contended at the formal hearing that the situation had changed and tax liability should not be computed on a combined basis for the fiscal year ended January 31, 1971. The taxpayer had originally requested permission to file a combined return and such basis continues from year to year, until rescinded. A request for discontinuance of a combined basis must be made on or before the due date of a report that is required to be filed in the future, and if granted, would be effective beginning with that year. Permission to file on a combined basis does not mean that the taxpayer has the option each year of paying taxes on a combined or individual basis, whichever produces the lesser tax.

(C) The notice of deficiency is affirmed together with interest in accordance with Section 1084 of Article 27 of the tax law.

Dated: Albany, New York

this 27th day of November 1973.

STATE TAX COMMISSION


President


Commissioner


Commissioner